

APPEALS AND RECONSIDERATION

Introduction

This factsheet is for people who want to appeal against a decision on a benefit administered by the Department for Work and Pensions (DWP), including income support, jobseeker's allowance, employment and support allowance, attendance allowance, disability living allowance, personal independence payment and universal credit.

For benefits and tax credits that are not administered by DWP, decision-making is done differently and by different offices. Tax credits and child benefit are administered by HM Revenue and Customs and housing benefit and council tax support are dealt with by local authorities.

The differences between the main DWP-administered benefits and other benefits and tax credits are not generally covered in this guide. If you need more information, contact an adviser on 01736 759500.

Revisions, supersessions and reconsiderations

The main ways in which the DWP changes decisions is by revising them or superseding them. When they revise a decision, they replace it with a new decision that takes effect from the date it was originally made. It is as if the original decision had never existed. On the other hand, when they supersede a decision, they replace it with a new decision that takes effect from that moment onwards – like a substitute coming into a football match part way through the game. The DWP uses the term 'reconsideration' to refer to revisions and supersessions together.

Mandatory reconsideration before appeal

You cannot appeal against a decision on a DWP-administered benefit until you have asked the DWP to 'reconsider' their decision, in other words, to look at it again. This is called 'mandatory reconsideration'. The DWP has no time limit to complete mandatory reconsiderations.

Appeals

If you disagree with the DWP reconsideration (for example, if the DWP simply upholds its first decision) you can appeal and take your case to an independent tribunal, called a First-tier Tribunal, who will look at the decision and replace it if they think it is wrong. The tribunal is part of Her Majesty's Courts and Tribunals Service.

Other benefits and tax credits

The First-tier Tribunal also hears appeals about housing benefit and tax credits. For tax credits you have to ask for a mandatory reconsideration before you can appeal but for housing benefit you don't.

Get independent advice to challenge decisions!

If you are thinking about challenging a decision, contact an adviser on 01736 759500 and we can advise you on your best course of action and sources of further support.

When not to challenge a decision

In some cases there is a risk of losing benefit if you challenge a decision. An example would be where you have been awarded personal independence payment (PIP) daily living component and mobility component both at the standard rate and you ask for a reconsideration or go to appeal to seek the enhanced rate. In this case the decision maker or First-tier Tribunal may look at the whole of your PIP award and so you risk losing what you already have. The law says that tribunals 'need not consider any issue that is not raised' in the appeal. In this example, if you were happy with the decision on one of the two PIP components, you should say so and, if a tribunal is considering removing that component, it should normally give you an opportunity to withdraw your appeal or offer you an adjournment to enable you to prepare your case on the issue.

Asking for a revision of a DWP decision

You can ask for a revision in writing, in person or by phone and you must ask within the dispute period (see below). It is best to ask in writing and keep a copy.

The dispute period

You must ask for a revision within the dispute period, which is normally one month. The dispute period starts on the day after the date on the decision notice (which must be the date when the DWP posts it) and ends one calendar month later. For a decision letter dated 15 March, for example, the dispute period ends on 15 April. (If there is no corresponding date next month it ends on the last day of the next month: for example, if the decision is dated 31 March, the period ends on 30 April.)

Extending the dispute period by 14 days

Some DWP decisions do not contain reasons. This is rarer than it used to be: decisions on personal independence payment and on employment and support allowance, for example, always contain reasons. If the DWP decision does not contain reasons and you ask for them during the one-month dispute period, you'll get a minimum of 14 more days from when the DWP provides the written statement of reasons to ask for a revision.

Extending the dispute period up to 13 months

For most benefits the one-month dispute period can be extended by 12 months - which brings it up to 13 months in total - where:

- the decision maker thinks it is reasonable and
- special circumstances made it impracticable for you to seek a revision within one month.

For personal independence payment, universal credit, and contribution-based JSA and contributory ESA if you claim them in a universal credit area, the deadline is one month longer: it is 13 months from the **end** of the normal one-month dispute period.

The later that you apply after the end of the one-month dispute period, the better reasons you need to succeed in getting a reconsideration. If you have missed the extended deadlines it may still be possible in rare cases to get a special kind of revision known as an 'any time' revision: seek advice.

No reconsideration: no appeal

The DWP's view is that, if the decision maker refuses your request to carry out a mandatory reconsideration because you are out of time, you cannot appeal to a First-tier Tribunal. You may, however, be able to seek a judicial review of the decision maker's refusal to reconsider but that is a complex legal process and you would need specialist advice. Or you could argue that a mandatory reconsideration has taken place, even if DWP say it hasn't, and appeal anyway: again, you would need specialist advice to do this.

Mandatory reconsideration phone call from DWP

Part of the mandatory reconsideration process is that the decision maker will try to phone you to explain the decision and ask you to provide any additional evidence that may help your case (for example, a letter from a health specialist not previously sent to DWP). The decision maker will make at least two attempts to phone you, at least three hours apart. If they can't reach you, they will go ahead with the mandatory reconsideration on the basis of the evidence that is already available to them. If during the phone call you say you have further written evidence the decision maker will wait to receive it and postpone the mandatory reconsideration for a month to allow you time to send the evidence. It is important that you do not let the phone call put you off appealing and that you seek independent advice.

Will the right to mandatory reconsideration apply to every case?

The DWP will make it clear in your decision notice whether or not you have the right to a mandatory reconsideration. Most decisions carry the right to a mandatory reconsideration. But some decisions do not (and therefore they do not carry a right of appeal either). They are mostly matters of administration rather than law. Examples are decisions:

- about how frequently your benefit should be paid
- whether to pay you while your claim is being processed
- whether an overpayment should be written off.

Employment and support allowance and mandatory reconsideration

If your employment and support allowance (ESA) claim is disallowed under the work capability assessment you can be paid ESA while you are appealing. But you cannot be paid ESA during the mandatory reconsideration period. While you cannot avoid a gap in payment of ESA during the mandatory reconsideration period, you may be able to claim other benefits such as jobseeker's allowance (JSA).

The government expects straightforward ESA mandatory reconsiderations to take around 14 days. They'll take longer if the DWP asks for further information and gives you one month to provide it. Tactically, you may prefer not to provide further information at this stage as you can still provide it at the appeal stage by which time you may be back on ESA.

If you claim JSA during the reconsideration period this will have no bearing on the ESA reconsideration about whether you are fit for work. Nor can the JSA decision maker decide that you are not capable of work for this would contradict the ESA decision that you are fit for work.

If you haven't claimed JSA or another benefit during the mandatory reconsideration period and you then appeal, the DWP will put your ESA back into payment as soon as they get your appeal request from HM Courts and Tribunals Service, and as long as you provide the appropriate medical evidence to cover the appeal period: fit notes from your doctor, usually. If you have backdated fit notes to cover the reconsideration period you should get backdated ESA for that period.

If you did claim JSA during the mandatory reconsideration and you then appeal, you must ask the DWP to put you back onto ESA: you won't have to make a new claim for ESA. But if you don't ask you will remain on JSA. If you provide backdated fit notes (medical certificates), you should get backdated ESA for the reconsideration period - unless you have already had the equivalent in other benefits during that time. So, for example, if you only got a JSA hardship payment during the reconsideration period, you could be due the difference between that and your ESA.

Appeals

You can only appeal after the DWP has carried out a revision, known as a mandatory reconsideration. There is no time limit for DWP to carry this out. If they simply uphold their original decision, they will send you a mandatory reconsideration notice, which sets out their reasons and your right to appeal direct to HM Courts and Tribunals Service. This is called 'direct lodgement'. You can appeal by letter but it is best to use appeal form SSCS1, available from www.justice.gov.uk. You may also be able to get the SSCS1 in paper form from independent advice centres.

Where to send your appeal

For cases in England and Wales you should send your completed form to HMCTS SSCS Appeals Centre, PO Box 1203, Bradford BD1 9WP. For cases in Scotland you should send it to HMCTS SSCS Appeals Centre, PO Box 27080, Glasgow G2 9HQ. (The SSCS1 appeal form includes these addresses.) Alternatively you can send your appeal to the Courts and Tribunals Service by fax. In this case fax should be the only submission of that appeal, as sending the appeal by post as well may cause confusion and delay. The fax number for England and Wales is 0870 739 4108 and for Scotland it is 0870 324 0164.

What your appeal must include

The Courts and Tribunals Service can only accept your appeal if it:

- is in writing
- is in English or Welsh
- includes a copy of the mandatory reconsideration notice (although there are exceptions: see below)
- gives reasons for the appeal
- is signed by you (or by your 'appointee': someone that DWP or a court has appointed to act on your behalf because you cannot manage your own affairs).

Note that the DWP should send you two copies of the mandatory reconsideration notice so you have one to keep and one to send with your appeal.

If your appeal does not include all these details, the Courts and Tribunals Service may return it to you for completion, which is why they strongly recommend that you use their appeal form SSCS1 rather than a simple letter.

If you appeal straight to the Courts and Tribunals Service without first asking for a mandatory reconsideration, they will return your appeal form to say it is not valid and advise you to ask DWP

for a mandatory reconsideration. If you are now late in asking you should explain why: see above under *Extending the dispute period up to 13 months*.

If you have lost your mandatory reconsideration notice you should ask the DWP Contact Centre that deals with your claim for a new one. Alternatively you may be able to appeal without the mandatory reconsideration notice if you can show the tribunal that a mandatory reconsideration has taken place: tribunals have a general power to waive the tribunal rules and may use it to accept your appeal without the mandatory reconsideration notice.

Asking for an oral hearing

Form SSCS1 also includes questions about whether you want an oral hearing (and dates you can or can't attend) or whether you want your appeal to be 'determined on the papers'. It is generally best to opt for an oral hearing particularly if you are appealing a decision relating to your fitness for work or disability. This is because the tribunal can ask questions at an oral hearing about anything that is unclear. The tribunal can't do this with paper hearings and so it cannot give you the benefit of the doubt over any gaps in your evidence. About 50% of oral hearings are successful while less than 20% of paper hearings succeed. Your chances of success are higher still if you attend the hearing with a representative.

Time limits to appeal

Your appeal must normally reach the Courts and Tribunals Service within the standard one-month time limit, which starts on the day after the DWP sends you the mandatory reconsideration notice. If your appeal is late you must explain why and the tribunal will consider your reasons and can extend the time limit. It has the power to accept late appeals up to 13 months after the date of the mandatory reconsideration notice. Longer delays need better reasons.

The appeal response

The Courts and Tribunals Service will send a copy of your appeal to DWP and ask them to provide a 'response' to explain how they came to their decision. As from October 2014 DWP will have a time limit to provide this within 28 calendar days – although they can ask for an extension. The DWP will send you a copy of the response.

If you have appealed a PIP decision since 1 March 2018 (not before) and have chosen to have a face-to-face hearing you can register to use [Track Your Appeal](#) by calling 0300 123 1142, Monday to Friday, 8:30am to 5:00pm.

Track your appeal can trigger an automated update to your phone or email account. Updates can include:

- reminding you to send in evidence
- confirming your evidence has been received by the Department for Work and Pensions (DWP)
- reminding you of your appeal hearing date
- any responses from the DWP
- notifications if your appeal is postponed, adjourned or withdrawn

The appeal hearing date

If you opt for an oral hearing, the Courts and Tribunals Service will arrange a time and date and must tell you at least 14 days in advance of the hearing.

If you need any further support or information please contact DIAL on 01736 759500 or you can refer directly to the link below:

www.disabilityrightsuk.org

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